

SENATE BILL No. 380

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2.

Synopsis: Probation for child molesting. Allows a court to sentence a person or modify the sentence of a person to place the person on probation for life or to order the person to participate in another program that provides supervision of the person for life if the person: (1) is convicted of committing child molesting two or more times; (2) is sentenced to a term of imprisonment and serves at least part of the sentence in a penal facility; and (3) agrees to be placed on probation for life or participate in another court ordered program that provides supervision of the person for life.

Effective: July 1, 2001.

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January 18, 2001, read first time and referred to Committee on Judiciary.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 380

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-50-2-2, AS AMENDED BY P.L.188-1999,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a
4 sentence for a felony, except as provided in this section or in section
5 2.1 of this chapter.
6 (b) With respect to the following crimes listed in this subsection, the
7 court may suspend only that part of the sentence that is in excess of the
8 minimum sentence:
9 (1) The crime committed was a Class A or Class B felony and the
10 person has a prior unrelated felony conviction.
11 (2) The crime committed was a Class C felony and less than seven
12 (7) years have elapsed between the date the person was
13 discharged from probation, imprisonment, or parole, whichever
14 is later, for a prior unrelated felony conviction and the date the
15 person committed the Class C felony for which the person is
16 being sentenced.
17 (3) The crime committed was a Class D felony and less than three



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(3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a Class A felony;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the amount of controlled substance involved has an aggregate weight of three (3) grams or more;
- (Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or
- (R) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e) **and section 2.2 of this chapter**, whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to

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end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) **Except as provided in section 2.2 of this chapter**, whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 2. IC 35-50-2-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.1. (a) Except as provided in subsection (b) or section 2 **or 2.2** of this chapter, the court may not suspend a sentence for a felony for a person with a juvenile record when:

(1) the juvenile record includes findings that the juvenile acts, if committed by an adult, would constitute:

(A) one (1) Class A or Class B felony;

(B) two (2) Class C or Class D felonies; or

(C) one (1) Class C and one (1) Class D felony; and

(2) less than three (3) years have elapsed between commission of the juvenile acts that would be felonies if committed by an adult and the commission of the felony for which the person is being sentenced.

(b) Notwithstanding subsection (a), the court may suspend any part of the sentence for a felony, except as provided in section 2 of this chapter, if it finds that:

(1) the crime was the result of circumstances unlikely to recur;

(2) the victim of the crime induced or facilitated the offense;

(3) there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense; or

(4) the acts in the juvenile record would not be Class A or Class B felonies if committed by an adult, and the convicted person is to undergo home detention under IC 35-38-1-21 instead of the

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minimum sentence specified for the crime under this chapter.

SECTION 3. IC 35-50-2-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2.2. (a) This section applies to an offender whether or not the court suspends part of the offender's sentence at the time of the offender's initial sentencing.**

(b) If an offender:

- (1) is convicted of committing child molesting under IC 35-42-4-3 and has at least one (1) prior unrelated conviction for committing child molesting under IC 35-42-4-3;**
- (2) is sentenced to a term of imprisonment and serves at least part of the offender's sentence in a penal facility; and**
- (3) agrees to:**

(A) be placed on probation for life; or

(B) participate in another court ordered program that provides supervision of the offender for life;

the court may sentence the offender or modify the sentence of the offender to place the offender on probation under IC 35-38-2 for life or order the offender to participate in another program that provides supervision of the offender for life.

(c) The court may establish the conditions of:

(1) probation for the offender; or

(2) any other program in which the court places an offender; under this section.

(d) If an offender violates the conditions of probation or another program established by a court under this section, the court may order execution of the sentence that was suspended by the court:

(1) at the time of the offender's initial sentencing; or

(2) when the offender's sentence was modified.

(e) If a court modifies an offender's sentence under this section after the offender's initial sentencing, the court:

(1) is not required to conduct a hearing to modify the offender's sentence; and

(2) shall notify the victim of the child molesting or the victim's representative that the court has modified the offender's sentence.

SECTION 4. [EFFECTIVE JULY 1, 2001] **IC 35-50-2-2.2, as added by this act, applies only to crimes committed after June 30, 2001.**

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